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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>UNITED STATES OF AMERICA,</b>	)	
Plaintiff,	)	
	)	
v.	)	
	)	
<b>THI THA LAN NGUYEN,</b>	)	
a/k/a "Grace Nguyen,"	)	Case No. 02-40132-02-JAR
<b>TUYET NGOC DOAN,</b>	)	
a/k/a "Terri Doan,"	)	
and	)	
<b>DANH THANH DOAN,</b>	)	
a/k/a "Dan Doan,"	)	
Defendants.	)	
	)	

**MEMORANDUM AND ORDER ON DEFENDANT’S MOTION TO SUPPRESS**

This comes before the Court on Defendant Thi Tha Lan Nguyen’s Motion to Suppress Evidence (Doc. 76). Defendant moves pursuant to Federal Rules of Criminal Procedure 12 and 41(f) for an Order suppressing all evidence seized by law enforcement officers from her Canadian town home. For the reasons set forth below, the Motion is denied.

**Factual Background**

On October 25, 2002, Kansas Highway Patrol Trooper Craig Davis stopped a rental vehicle on Interstate 70 in Lincoln County, Kansas. The trooper searched the vehicle and found more than 13,000 Ecstasy pills. The driver, John Nguyen, and the passenger, Vu Hoy Doan, a/ka/ "Chris Doan," were arrested. On November 6, 2002, Doan was indicted on charges of possession with the intent to distribute Ecstasy.

United States law enforcement officers contacted their Canadian counterparts and began a joint investigation. On November 1, 2002, based on information known to Canadian officers and

information obtained in the United States, Canadian officers obtained and executed a search warrant for the town home shared by Doan and Defendant Thi Tha Lan Nguyen in British Columbia, Canada. Canadian officers seized two computers, documentary evidence, and digital scales from the apartment. The documentary evidence was conveyed to the United States Attorney, and on January 19, 2003, a superseding indictment was issued charging Defendant with conspiracy to distribute controlled substances between November 20, 2001 and October 25, 2002.

### **Discussion**

The Court held an evidentiary hearing on April 19, 2004, but delayed ruling on the Motion to Suppress because the search warrant affidavit offered by the Government did not satisfy Rule 901 of the Federal Rules of Evidence. The Court gave the Government fourteen days to provide the Court with a certified copy of the affidavit that satisfied the requirements of Rule 902(3). The Government has timely submitted a certified copy of the search affidavit which the Court finds is admissible as a self-authenticating foreign public document.

Defendant urges that there was insufficient probable cause to justify the issuance of a warrant for the search of the home shared with Doan, and that therefore, the evidence seized from her home must be suppressed. Reviewing courts give “great deference” to the issuing magistrate’s determination of probable cause.<sup>1</sup> The court’s duty is to ensure that the issuing magistrate had a “substantial basis” for concluding that the affidavit in support of the search

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<sup>1</sup>*United States v. Finnigin*, 113 F.3d 1182, 1185 (10th Cir. 1997).

warrant established probable cause.<sup>2</sup> “The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.”<sup>3</sup> The test is whether the facts presented in the affidavit would “warrant a man of reasonable caution” to believe that evidence of a crime will be found at the place to be searched.<sup>4</sup> Thus, only a probability and not a prima facie showing is the standard of probable cause.<sup>5</sup>

When an affidavit is based on information obtained from a confidential informant, the basis of the informant’s knowledge, as well as his reliability, are important factors in deciding whether information in an affidavit supports a finding of probable cause for a search.<sup>6</sup> The veracity of the informant need not be established, however, when there is sufficient independent corroboration of the informant’s statements.<sup>7</sup> An officer is not required to corroborate information received from an informant through personal observation before determining there is probable cause for a search warrant; rather, the officer simply must have knowledge of other matters that reasonably corroborate the informant’s statements.<sup>8</sup>

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<sup>2</sup>*United States v. Mathis*, 357 F.3d 1200, 1205 (10th Cir. 2004) (citing *Illinois v. Gates*, 462 U.S. 213, 236 (1983)).

<sup>3</sup>*United States v. Nolan*, 199 F.3d 1180, 1182 (10th Cir. 1999) (citing *Gates*, 462 U.S. at 236).

<sup>4</sup>*Id.* at 1182 (citing *Texas v. Brown*, 460 U.S. 730, 742 (1983)).

<sup>5</sup>*Id.* at 1182 (citing *Gates*, 462 U.S. at 235).

<sup>6</sup>*United States v. Avery*, 295 F.3d 1158, 1167 (10th Cir. 2002) (citing *Gates*, 462 U.S. at 233 and *United States v. Tuter*, 240 F.3d 1292, 1295 (10th Cir. 2001)).

<sup>7</sup>*United States v. Danhauer*, 229 F.3d 1002, 1006 (10th Cir. 2000).

<sup>8</sup>*Mathis*, 357 F.3d at 1204.

Defendant's assertion that the search warrant affidavit lacked probable cause is misplaced. The affiant, Stephen Cocks, noted that he had been a member of the Royal Canadian Mounted Police for nine years and had worked on drug investigations since 1994. Additionally, Cocks stated that he had "two years of experience in handling confidential human sources of information of proven reliability," and that in the past he had received reliable information from the confidential informant related to Doan.

With reference to this search warrant, the informant advised that: 1) Doan trafficks in marijuana, Ecstasy, heroine, and cocaine at the kilogram level; 2) Doan is active in the use of computers for counter surveillance and communication with other drug dealers; and 3) in June of 2001 Doan was just beginning to traffic Ecstasy, and was moving up to dealing in quantities as high as 20,000 pill batch lots, which were destined for the United States. As a result of the information provided by the informant, Cocks designated Doan as a person of interest in the Canadian Police Information Center.

The search warrant affidavit also incorporates the affidavit submitted by DEA Special Agent Jack Smalley to Magistrate Judge O'Hara to search two laptop computers, three cell phones and a camera found in Doan's car on October 25, 2002, in Lincoln, County Kansas.

Smalley's affidavit details the arrest of Doan and the subsequent search of his vehicle.

Additionally, Smalley states that he examined the day planner, car rental agreement, and a map found in Doan's vehicle and based on his extensive experience he believed the items showed various drug pick ups and drop offs. For instance, Smalley indicated that he believed day planner entries from September 5, 2002, until October 23, 2002, showed a drug pick up in California and delivery of the drugs to Wyoming. Other day planner entries included: "e-mail buy+sell," and

“e-mail buy sell (confirm).”

The search warrant affidavit further states that Cocks conducted an investigation to confirm that Doan resided at 43-15450 101A Ave, Surrey, British Columbia. Cocks checked the motor vehicle database and learned Doan had listed the British Columbia address on his drivers license. On October 31, 2002, Cocks went to Doan’s British Columbia address and observed a white Lexus through the garage window of the town home shared by Doan and defendants, bearing the license plates of a vehicle registered to Doan. During his investigation, Cocks found two entries in the Canadian police database for Suspicious Currency transactions. Cocks also noted that in his experience, money and ledgers reflecting drug transactions, are normally stored in the residence so that they may be easily accessible to the residents.

The Court finds the search warrant affidavit sets forth sufficient facts that “warrant a man of reasonable caution” to believe that there was a fair probability that contraband would be found in Defendant’s home. Not only did the affidavit contain detailed information provided by a confidential informant, but Cocks stated that the informant was reliable and had provided reliable information in the past. Moreover, the statements of the confidential information were corroborated by the events which transpired in Kansas, as recounted by Agent Smalley. And, Cocks personally confirmed that Doan resided in the British Columbia town home before seeking the warrant. Because the affidavit in support of the search warrant established probable cause, Defendant’s motion is denied.

**IT IS THEREFORE ORDERED BY THE COURT** that the Defendant’s Motion to

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Suppress Evidence (Doc. 76) is DENIED.

**IT IS SO ORDERED.**

Dated this 27<sup>th</sup> day of May 2004.

S/ Julie A. Robinson  
JULIE A. ROBINSON  
United States District Judge

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